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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,019	07/15/2003	Christopher T. Dohl	33979	8613
23589	7590	05/10/2005		
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			EXAMINER TRAN LIEN, THUY	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/620,019	DOHL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 February 2005.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-38 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

Claims 1-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the response filed 2/7/05, applicant amended claims 1,9,20 and 28 to include the limitation of " modified wheat protein concentrate product other than wheat gluten". This limitation does not have support in the specification. Page 3 of the specification discloses that the wheat protein concentrates are manufactured by dispersing wet gluten in an ammonia solution followed by spray drying. The declaration submitted with the response states that FP 300, FP500 and FP 600 are produced by mixing vital wheat gluten with different chemicals such as ammonia, sodium metabisulphite, sodium ascorbaed and acetic acid. Thus, the wheat protein concentrate is wheat gluten that has been modified. Thus, there is no support for the limitation of ' other than wheat gluten" because the protein is a wheat gluten. There is no disclosure that the modification changes the protein completely such that it is no longer wheat gluten.

Claims 1-8, 20-27 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Namdari in view of Bassi et al , Singer and applicant's admission of prior art.

Namdari discloses a high protein dough mix for a leavened bakery product. The dough comprises 10-80% of a protein containing material selected from the group consisting of soy products, gluten, milk products, whey products, egg products and nut and up to 50% flour. The protein containing material may include 1-40% soy products,

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1-40% wheat gluten, 1-20% milk product, 1-20% whey products, 0-50% egg products, 1-30% nuts and mixtures thereof. The whey product includes sodium casseinate. Up to 8% of a leavening agent is also used; typically, baking soda, baking powder or yeast may be utilized. ( see col. 1 lines 35-60, col. 2 and the examples)

Since the same proteins such as whey protein, egg, and sodium casseinate are used, it is inherent the percent protein is the same as claimed in claims 1 and 20. The amount of protein falls within the range claimed. Since the amount of protein fall within the ranges claimed, it is inherent the total protein of the product is the same as claimed. Wheat gluten is a wheat protein concentrate product.

Namdari does not disclose wheat protein concentrate other than wheat gluten.

Bassi et al disclose modified wheat glutens that have been treated with agents such as ammonium sulfites, bisulfites, metabisulfites, nitrites, ascorbic acid etc.. The modified wheat glutens have lower molecular weight and viscosity.

Singer discloses a modified wheat gluten that is odorless, tasteless and more functional. The modified wheat gluten is used in baking process.

Page 3 of the specification discloses modified wheat glutens are available from MGP Ingredients.

While Namdari teaches to use wheat gluten, the disclosure is not limited to only wheat gluten; in fact, many other types of protein are added. It would have been obvious to one skilled in the art to add any known type of protein such as the ones disclosed by Bassi et al, Singer or the commercially available products disclosed on page 3 of the instant specification depending on the properties wanted. As shown by

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the affidavit, the proteins FP 300, FP 500, FP 600 and FP 800 have higher protein concentration and different properties from wheat gluten. It would have been obvious to one skilled in the art to select such proteins if the properties provided by the proteins are desired. It would also have been obvious to use the protein of Bassi et al or Singer if the properties provided by the protein are desired. It would have been obvious to use any known leavening agents; all the agents claimed are notoriously well known in the art. It would have been obvious to leaven with yeast depending on the type of dough product made and the flavor wanted.

Claims 9-19 and 28-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Namdari in view of Haralampu et al.

Namdari does not disclose the inclusion of resistant starch in the dough and baked product.

Haralampu et al disclose a granular resistant starch; the starch is chemically modified. The resistant starch is used in a variety of food such as cookies, breads, brownies, snacks etc.. The resistant starch is characterized by a total fiber content in the range of from about 20-50% by weight. The starch is used in amounts ranging from about 1-15%. The starch is used in place of sugar, flour, and/or fat to lower calorie and fat content and the starch is used to increase fiber content ( see col. 2 lines 53-64, col. 4, col. 6 lines 29-57).

It would have been obvious to one skilled in the art to add resistant starch as taught by Haralampu et al to the Namdari dough when desiring to lower the amount of flour, fat and sugar used to make product lower in calorie, fat and higher in fiber content.

While Haralampu et al disclose the amount used in generally in the range of 1-15%, it would have been obvious to increase the amount depending on the properties wanted. For example, it would have been obvious to use more when wanting more fiber, or to decrease carbohydrate content by replacing more of the sugar and flour with the starch.

Applicant's arguments with respect to claims 1-38 have been considered but are moot in view of the new ground(s) of rejection.

The affidavit has been considered but is not deemed to overcome the rejections. The affidavit shows the different properties of the commercially available proteins. It would have been obvious to one skilled in the art to use different protein as set forth above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 6, 2005

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*